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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,122	06/24/2003	Isaac Glndi	4029.006.003	2223

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EXAMINER	
DOAN, ROBYN KIEU	
ART UNIT	**PAPER NUMBER**
3732	

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/603,122	GLNDI, ISAAC	
	Examiner	Art Unit	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *24 June 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-24 are rejected under 35 U.S.C. 101 because they appear to embrace more than one statutory class of invention. Claims which are intended to embrace both product or machine and process is precluded by language of 35 U.S.C 101, which sets forth statutory classes of the invention in the alternative only. In claim 1, lines 3-8 appear to be directed to the apparatus, however, lines 1-2 recite a method, and thus appear to be directed to a process. As such, claims 1-24 appear to embrace multiple statutory classes of invention which is prohibited (See Ex parte Lyell, 17 USPQ2d 1548 (1990)).

Claim Rejections - 35 USC § 112

Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-24 are invalid under 35 U.S.C 112, second paragraph, since a claim which purports to be both machine and process is ambiguous and therefore does not particularly point out and distinctly claim the subject matter of the invention. Ex parte Lyell, 17 USPQ2d 1548 (1990).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-2, 4-8, 10-14, 16-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick (5683762) in view of DiPersio et al (4776593).

With regard to claims 1-2, 4-8, 10-14, 16-22 and 24, Banschick discloses a cosmetic container (col. 22, lines 1-5) comprising a recess holding cosmetic, a cap (decorative end closure col. 22, line 8) having an entertainment device for entertaining a child (col. 1, lines 40-50 and 64-67), the entertainment device being a part of the cap and comprising colored lights (co. 22, lines 20-25), blinking lights (col. 15, lines 15-17), sound being animal noises, musical tone, verbal message, musical instrument (col. 21, lines 38-55); also the container being a bottle (col. 23, lines 15-17). Banschick does not disclose the entertainment device having at least one die, a flexible sheet and a cover, the die being on the sheet and wherein depressing the cover causes the die to be tossed, also Banschick does not disclose the material of the cap being a faceted plastic and the shape of the container being a musical instrument. DiPersio discloses a game for entertaining a child (fig. 1) comprising at least one die (39), a sheet (29) and a cover (37), the die being on the sheet and wherein depressing the cover causes the die to be tossed (col. 2, lines 42-47). It would have been obvious to one having an ordinary skill in

the art at the time the invention was made to employ the die as taught by DiPersio into the entertainment device of Banschick for the purpose of entertaining the child. It would alsohave been obvious to one having an ordinary skill in the art at the time the invention was made to employ the material of the cap being a faceted plastic and the cover of the die being flexible, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the shape of the container being a musical instrument, since such a modification would have involved a mere change in the shape of the component.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick in view of DiPersio.

With regard to claim 3, Banschick in view of Dipersio disclose a cosmetic container comprising all the claimed limitations in claim 1 as discussed above except for the entertainment device comprising at least two dice. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to employ two dice, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick in view of DiPersio as applied to claim 4 above, and further in view of Farman (4861505).

With regard to claim 15, Banschick in view of DiPersio disclose a cosmetic container comprising all the claimed limitations in claim 4 as discussed above except for a timer. Farman discloses a cosmetic container (fig. 1) having a timer (63). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the timer as taught by Farman into the cosmetic container of Banschick in view of DiPersio for the purpose of setting a predetermined time to activate and deactivate the device.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick in view of DiPersio as applied to claim 5 above, and further in view of Oren et al (6443794).

With regard to claim 23, Banschick in view of DiPersio disclose a cosmetic container comprising all the claimed limitations in claim 5 as discussed above except for the sound being touch activated. Oren et al discloses a toy (fig. 2) comprising sound being touch activated (col. 3, lines 15-22). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ touch activated mechanism as taught by Oren et al into the entertainment device of Banschick in view of DiPersio for the intended use purpose.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banschick in view of DiPersio as applied to claim 1 above, and further in view of Sheffler et al (6325075).

With regard to claim 9, Banschick in view of DiPersio disclose a cosmetic container comprising all the claimed limitations in claim 1 as discussed above except for the cosmetic having glitter. Sheffler et al discloses a nail polish bottle (fig. 1) having cosmetic product with glitter. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the glitter as taught by Sheffler et al into the cosmetic container of Banschick in view of DiPersio for the purpose of providing a desired ornamental effect.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Raymond is cited to show the state of the art with respect to a lipstick having a die-shaped element attached at one end thereof.

The drawings filed 06/24/03 have been approved by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robyn Doan
Examiner
February 1, 2005

John J. Wilson
Primary Examiner